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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/453,319	12/02/1999	STEVEN M. SHEPARD	64631-0020	2455

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RADER, FISHMAN & GRAUER PLLC  
39533 WOODWARD AVENUE  
SUITE 140  
BLOOMFIELD HILLS, MI 48304-0610

EXAMINER

VERBITSKY, GAIL KAPLAN

ART UNIT	PAPER NUMBER
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2859

DATE MAILED: 05/08/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
09/453,319

Applicant(s)  
Shepard

Examiner  
Gail V rbitsky

Art Unit  
2859



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1) ☒ Responsive to communication(s) filed on Jan 30, 2002

2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

## Disposition of Claims

4) ☒ Claim(s) 1-28 is/are pending in the application.

4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.

6) ☒ Claim(s) 1, 3, 18-19, 27-28 is/are rejected.

7) ☒ Claim(s) 2, 4-17, 20-26 is/are objected to.

8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirements.

## Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.

12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) ☐ All b) ☐ Some\* c) ☐ None of:

- ☐ Certified copies of the priority documents have been received.
- ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

15) ☐ Notice of References Cited (PTO-892)

18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_

16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

19) ☐ Notice of Informal Patent Application (PTO-152)

17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_

20) ☐ Other: \_\_\_\_\_

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## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of 35 U.S.C. 102(b) which forms the basis for all obviousness rejections set forth in this Office action:

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 3, 18-19, 27-28 <sup>are</sup> rejected under 35 U.S.C. 102(b) as anticipated by Devitt et al. 5111048 [hereinafter Devitt].

*non-destructive*

Devitt discloses in Fig. 1 a device and method of applying a mechanical stress with stressing fixtures (means for applying force with attachments) 12 and 68 to a component/ sample/ specimen 18 already having a crack or subsurface defect so that the crack becomes detectable / exacerbated (col. 7, lines 28-46). Inherently, the dimensions of the crack increase. Devitt also uses a flash lamp (col. 4, line 44) to apply heat and an infrared radiation detector such as an infrared radiometer or video camera 16 to analyze a response to heating and stress application.

### *Allowable Subject Matter*

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3. Claims 2, 4-17, 20-26 would be allowable if rewritten to overcome the rejection(s) stated in this Office action and to include all of the limitations of the base claim and any intervening claims.

*Response to Arguments*

4. Applicant's arguments filed on January 30, 2002 have been fully considered but they are not persuasive.

Applicant states that Devitt does not teach a non-destructive but destructive method.

In response to this argument: A) According to Webster, 10th edition, page 790, "non-destructive: not causing destruction of material being investigated or treated", thus, meaning that the material (sample) can be re-used. Both, applicant and Devitt, exacerbate the defect. **N**othing in Devitt's states that the sample can not be re-used, in fact, Devitt states that the stress should be below a threshold stress intensity level so as to avoid severe damage (destruction) of the sample.

Therefore, in a broad sense, Devitt suggests that the sample can be re-used after the test.

Applicant states that Devitt applies stress that is stronger than applicant's and that applicant uses the stress to aggravate the existing damage. However, Devitt also uses the stress to aggravate the existing damage, i.e., Devitt applies stress to cause the (existing) subsurface defect to open.

Applicant does not specify the strength of the stress applied in the present invention. Therefore, nothing in Devitt contradicts the claimed invention. With respect to the particular strength of the stress: the limitation (the particular strength of the stress applied to the sample) on which Applicant relies, is not stated in the claims. It is the claims that define the claimed invention, and

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it is claims, not specifications that are anticipated or unpatentable. Constant v. Advanced Micro-Devices, Inc. 7 USPQ 1064.

Applicant states that Devitt can not detect pure subsurface defect: the limitation on which Applicant relies is not stated in the claims. It is the claims that define the claimed invention, and it is claims, not specifications that are anticipated or unpatentable. Constant v. Advanced Micro-Devices, Inc. 7 USPQ 1064.

*the arguments*

With respect to Cramer, ~~Li~~ and Article ~~are~~ <sup>are</sup> moot in view of the new ground of rejection.

### **Conclusion**

5. Any inquiry concerning this communication should be directed to Examiner Verbitsky whose telephone number is (703) 306-5473.

Any inquiry related to the status of this application should be directed to the Group Receptionist whose telephone number is (703) 308-0956.

GKV

May 01, 2002



Diego Gutierrez  
Supervisory Patent Examiner  
Technology Center 2800